

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #70



TRADEMARK TRIAL AND
APPEAL BOARD

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PRAMIL, S.R.L. (ESPHARMA),

Petitioner,

V.

MICHEL FARAH,

Registrant.

Cancellation No. 32,341

**PETITIONER’S MOTION TO QUASH NOTICE OF TAKING
DEPOSITION**

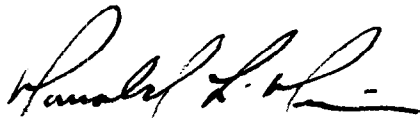
Petitioner moves this honorable Board to Quash a Notice of Deposition (Discovery) that was served upon counsel for the Petitioner by mail and received on August 5, 2002. It is not known when or if such Notice was filed at the Board in as much as a "Certificate of Mailing" to the TTAB was dated February 30, 2002, more than 5 months ago. Accordingly a copy of the Motion is attached hereto.

The Deposition, noted was apparently to be taken upon written questions as provided in 37 C.F.R. §2.124 before a court reporter on no specific date and at no specific place and before no specific individual. Since the Petitioner is located in Italy, it is assumed that such deposition will be administered in that country, however, petitioner is at a loss to know as to when and where this deposition is to be taken. See Rule 31(a)(3)(2) of the Federal Rules of Civil Procedure.

The Notice of Taking the Deposition also refers to an incorrect statutory basis (35 U.S.C.).

Accordingly, there is no way in which Petitioner can respond to this Notice without additional information as noted above.

Respectfully submitted,



Donald L. Dennison
Attorney for Petitioner
Dennison, Schultz & Dougherty
1745 Jefferson Davis Highway
Suite 612
Arlington, VA 22202
(703)412-1155 Ext. 15

August 9, 2002

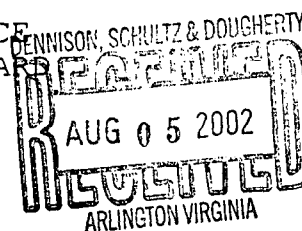
CERTIFICATE OF SERVICE

This is to certify that a copy of this Motion to Quash was served upon counsel for the Registrant by depositing the same in the United States mail with proper postage affixed this 9th day of August 2002, addressed to Andrew W. Ransom, Esq. c/o Malloy & Malloy, P.A., 2800 S.W. 3rd Avenue, Miami, FL 33128.



Donald L. Dennison

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



PRAMIL S.R.L. (ESAPHARMA),
Petitioner,

vs.

MICHEL FARAH,

Registrant.

Cancellation No. 32,341
Registration No. 2,447,970
Mark: OMIC PLUS



08-09-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #70

NOTICE OF TAKING DEPOSITION

PLEASE TAKE NOTICE THAT, pursuant to Fed. R. Civ. P. 30(b)(6), and 35 U.S.C. §§ 2.120(c) and 2.124, the Registrant, Michel Farah ("Registrant") by its attorneys, will take the deposition on written examination and pursuant to the attached written questions (Exhibit A) of the following, pursuant to the procedures set forth in 35 U.S.C. §2.124: PRAMIL S.R.L. (ESAPHARMA). The deponent shall designate one or more officers, directors, or managing agents or other persons who consent to testify on its behalf, to testify as to the following subject areas related to this Cancellation Proceeding, as more fully set forth in the attached written deposition questions, and as generally described below:

1. Witness Background;
2. Claimed dates of use of the OMIC mark, by specific products, and geographic locations of such use;
3. Claimed overall and annual volume of such use, including with respect to the individual categories below, such as sales and distribution, manufacture, purchases, advertising and promotion, etc.

COPY

4. OMIC trademark applications and registrations;
5. OMIC products and product information, including individual product type, size, container, packaging, specific OMIC mark used (i.e. OMIC/OMIC PLUS and any accompanying design elements), where and how OMIC marks appears on products, other marks or logos appearing on the products (e.g. PRAMIL), product ingredients, whether products are cosmetics, pharmaceuticals, or medications, whether products are used or sold under doctor authority or supervision, intended and indicated uses for products, and similar details;
6. OMIC product government approvals, investigation and inquiries;
7. OMIC government detentions of shipments of OMIC PRODUCTS;
8. OMIC product prices;
- ~~9. Instances of actual confusion pertaining to OMIC PRODUCTS;~~
10. Retail outlets at which OMIC PRODUCTS are sold;
11. Wholesale outlets at which OMIC PRODUCTS are sold;
12. Consumers of OMIC PRODUCTS;
13. Advertising and promotion of OMIC PRODUCTS;
14. Manufacture and purchase of OMIC PRODUCTS sold by Petitioner;
15. Importation of OMIC PRODUCTS;
16. Sales and Distribution of OMIC PRODUCTS;
17. Petitioner's knowledge of prior use and creation of OMIC PRODUCTS and the OMIC trademark;
18. Petitioner's contentions as to Registrant's use of the OMIC trademark;
19. Third party uses of the OMIC trademark;
20. Relationship with Edwin Okeke and Duwin Pharmacuetical & Chemical Co.;
21. Relationship and manner of doing business with Petitioner's predecessors, distributors, licensees, manufacturers, vendors and suppliers;
22. Relationship and manner of doing business with the Ainis, Symcha Horowitz, ICE Marketing, IBE New York, IBE Miami, Homeboys New York, Michel Farah and his affiliated companies;
23. Other claimed reasons why Registrant's registration should be cancelled;
24. Any other areas of inquiry pertaining to the OMIC mark or product;
25. Identity of witnesses to any of the foregoing;
26. Identity and location of documents pertaining to any of the foregoing.

The deposition shall be taken, under oath, before a court reporter authorized to administer oaths in the place where the deposition is held, either by the law thereof, or by the law of the

United States, or by other person so authorized in Fed.R.Civ.P. 28.
The verbal responses to the written questions shall be recorded by
the court reporter. The deposition will continue from day to day
until complete.

Respectfully submitted,

Dated: July 30, 2002

By: 

John Cyril Malloy, III
Florida Bar No. 964,220
Andrew W. Ransom
Florida Bar No. 964,344
MALLOY & MALLOY, P.A.
2800 S.W. Third Avenue
Miami, Florida 33129
Telephone (305) 858-8000
Facsimile (305) 858-0008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
document (including attached written deposition questions) was
served upon Donald L. Dennison, Esq., Dennison, Scheiner, Schultz
& Wakeman, 1745 Jefferson Davis Highway, Suite 612, Arlington,
Virginia 22202, via first class United States mail, postage pre-
paid this 30th day of July, 2002.

By: 

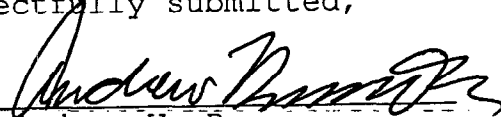
Andrew W. Ransom
Florida Bar No. 964,344

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing document (excluding written deposition questions) was deposited by United States Postal Service via first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, Attn: T.T.A.B., "Box TTAB", 2900 Crystal Drive, Arlington, Virginia 22202-3513, this 30th day of February, 2002.

Respectfully submitted,

By: _____


Andrew W. Ransom

Florida Bar No. 964,344

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